

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

**15-CR-179-FPG**

v.

**STATEMENT WITH RESPECT TO  
SENTENCING FACTORS**

DONALD GARDNER, JR.,

Defendant.

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**FRANK R. PASSAFIUME, ESQ.**, affirms under penalty of perjury that:

1. I am an attorney with the Federal Public Defender's Office located at 300 Pearl Street, Suite 200, Buffalo, New York 14202, and I represent the defendant, Donald Gardner, Jr., in the instant matter.

2. I make this Affirmation in accordance with U.S.S.G. § 6A1.2, and hereby state that I reviewed the presentence report ("PSR") with the defendant.

3. There are no facts contained in the PSR to which the defendant disputes. The defendant adopts the PSR in its full prepared form.

4. The defense reserves the right to present any and all relevant mitigating evidence at sentencing to advocate for a sentence that is in accordance with the plea agreement.

5. Additionally, the defense is simultaneously filing a Sentencing Memorandum, which references the following exhibits:

EXHIBIT A: Handwritten note by Donald Gardner, Jr. remembering his father;

EXHIBIT B: Letter from Carol Cardner, dated April 5, 2018;

EXHIBIT C: Letter from Sandra Recor, dated May 24, 2018;

EXHIBIT D: Letter from Laura Mongellow, dated April 27, 2018;

EXHIBIT E: School records of Donald Gardner Jr. from Tully Central Schools,  
(Under Seal) including psychological reports of Thomas A. Lazzaro, Ph.D., dated April  
2, 1996, and Christine Muller-Schwarze, Ph.D., dated January 26, 1983;

EXHIBIT F: NuStep Professional Counseling Service Treatment Summary, written by  
(Under Seal) Cindy Barletta, LMSW, dated July 12, 2016;

EXHIBIT G: Report of Michael E. Rutter, Ph.D., dated July 19, 2016;  
(Under Seal)

EXHIBIT H: Report of Ana Natasha Cervantes, M.D., and Melissa D. Heffler, M.D.,  
(Under Seal) dated December 7, 2016;

EXHIBIT I: NuStep Professional Counseling Services Memorandum, written by Cindy  
(Under Seal) Barletta, LMSW, dated February 21, 2017;

EXHIBIT J: Bureau of Prisons Competency Evaluation, prepared by Kari M.  
(Under Seal) Schlessinger, Psy.D., Ph.D., dated April 14, 2017;

**DATED:** July 6, 2018, Buffalo, New York.

Respectfully submitted,

**/s/Frank R. Passafiume**

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*Attorney for Donald Gardner, Jr.*

**TO:** Douglas Penrose, Assistant United States Attorney  
Natalie Whitman, United States Probation Officer